II

105TH CONGRESS
1ST SESSION

S. 1208

To protect women's reproductive health and constitutional right to choice, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 23, 1997

Mrs. BOXER (for herself and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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A BILL

To protect women's reproductive health and constitutional right to choice, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Family Planning and Choice Protection Act of 1997''.

SEC. 2. FINDINGS.

Congress finds that—

(1) reproductive rights are central to the ability of women to exercise full enjoyment of rights secured to women by Federal and State law;

(2) abortion has been a legal and constitutionally protected medical procedure throughout the United States since 1973 and has become part of mainstream medical practice as is evidenced by the positions of medical institutions including the American Medical Association, the American College of Obstetricians and Gynecologists, the American Medical Women's Association, the American Nurses Association, and the American Public Health Association;

(3) the availability of abortion services is diminishing throughout the United States, as evidenced by—

(A) the fact that 84 percent of counties in the United States have no abortion provider; and

(B) the fact that, between 1982 and 1992, the number of abortion providers decreased in 45 States; and

(4)(A) the Department of Health and Human Services and the Institute of Medicine of the National Academy of Sciences have contributed to the development of a report entitled ''Healthy People 2000'', which urges that the rate of unintended

pregnancy in the United States be reduced by nearly 50 percent by the year 2000;

(B) nearly 60 percent, or approximately 3,100,000, of all pregnancies in the United States each year are unintended, resulting in 1,500,000 abortions in the United States each year; and

(C) the provision of family planning services, including emergency contraception, is a cost-effective way of reducing the number of unintended pregnancies and abortions in the United States; and

(5) at a minimum, Congress must enact legislation establishing or retaining the following policies to preserve the choice and reproductive health of women:

(A) Authorization of family planning programs.

(B) The prohibition of any gag rule on information pertaining to reproductive medical services.

(C) The promotion of equitable treatment and coverage of prescription contraception drugs and devices in the provision of health insurance.

(D) The provision of funding for emergency contraceptive education.

(E) The establishment of breast cancer, cervical cancer, and chlamydia screening programs in all 50 States.

(F) Full implementation of contraceptive and infertility research programs.

(G) Funding through the medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) for abortion services.

(H) Protection of women from clinic violence.

(I) Final approval of the drug called Mifepristone or RU–486.

(J) The maintenance of a fundamental right to choose, as stated in the Supreme Court decision in Roe v. Wade, 410 U.S. 113 (1973).

(K) The establishment of the right of the District of Columbia to access locally raised revenue to provide abortion services to low-income women.

(L) The promotion of fairness in insurance.

(M) The establishment of the ability of military personnel overseas to obtain abortion services.

TITLE I—PREVENTION

Subtitle A—Family Planning

SEC. 101. FAMILY PLANNING AMENDMENTS.

Section 1001(d) of the Public Health Service Act (42 U.S.C. 300(d)) is amended to read as follows:

''(d) For the purpose of making grants and entering into contracts under this section, there are authorized to be appropriated $275,000,000 for fiscal year 1999 and such sums as may be necessary for each of fiscal years 2000 through 2003.''.

SEC. 102. FREEDOM OF FULL DISCLOSURE.

Title XI of the Civil Rights Act of 1964 (42 U.S.C. 2000h et seq.) is amended by adding at the end the following:

''SEC. 1107. INFORMATION ABOUT AVAILABILITY OF REPRODUCTIVE HEALTH CARE SERVICES.

''(a) DEFINITION.—As used in this section, the term 'governmental authority' means any authority of the United States.

''(b) GENERAL AUTHORITY.—Notwithstanding any other provision of law, no governmental authority shall, in or through any program or activity that is administered or assisted by such authority and that provides health care services or information, limit the right of any person to provide, or the right of any person to receive, nonfraudu-

lent information about the availability of reproductive health care services, including family planning, prenatal care, adoption, and abortion services.''.

Subtitle B—Prescription Equity and Contraceptive Coverage

SEC. 111. FINDINGS.

Congress finds that—

(1) each year, approximately 3,100,000 pregnancies, or nearly 60 percent of all pregnancies, in this country are unintended;

(2) contraceptive services are part of basic health care, allowing families to both adequately space desired pregnancies and avoid unintended pregnancy;

(3) studies show that contraceptives are cost-effective: for every $1 of public funds invested in family planning, $4 to $14 of public funds is saved in pregnancy and health care-related costs;

(4) by reducing rates of unintended pregnancy, contraceptives help reduce the need for abortion;

(5) unintended pregnancies lead to higher rates of infant mortality, low-birth weight, and maternal morbidity, and threaten the economic viability of families;

(6) the National Commission to Prevent Infant Mortality determined that ''infant mortality could be reduced by 10 percent if all women not desiring pregnancy used contraception'';

(7) most women in the United States, including two-thirds of women of childbearing age, rely on some form of private employment-related insurance (through either their own employer or a family member's employer) to defray their medical expenses;

(8) the vast majority of private insurers cover prescription drugs, but many exclude coverage for prescription contraceptives;

(9) private insurance provides extremely limited coverage of contraceptives: half of traditional indemnity plans and preferred provider organizations, 20 percent of point-of-service networks, and 7 percent of health maintenance organizations cover no contraceptive methods other than sterilization;

(10) women of reproductive age spend 68 percent more than men on out-of-pocket health care costs, with contraceptives and reproductive health care services accounting for much of the difference;

(11) the lack of contraceptive coverage in health insurance places many effective forms of contracep-

tives beyond the financial reach of many women, leading to unintended pregnancies; and

(12) the Institute of Medicine Committee on Unintended Pregnancy recently recommended that ''financial barriers to contraception be reduced by increasing the proportion of all health insurance policies that cover contraceptive services and supplies''.

SEC. 112. AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as added by section 603(a) of the Newborns' and Mothers' Health Protection Act of 1996 and amended by section 702(a) of the Mental Health Parity Act of 1996) is further amended by adding at the end the following new section:

''SEC. 713. STANDARDS RELATING TO BENEFITS FOR CONTRACEPTIVES.

''(a) REQUIREMENTS FOR COVERAGE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, may not—

''(1) exclude or restrict benefits for prescription contraceptive drugs or devices approved by the Food

and Drug Administration, or generic equivalents approved as substitutable by the Food and Drug Administration, if such plan provides benefits for other outpatient prescription drugs or devices; or

''(2) exclude or restrict benefits for outpatient contraceptive services if such plan provides benefits for other outpatient services provided by a health care professional (referred to in this section as 'outpatient health care services').

''(b) PROHIBITIONS.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, may not—

''(1) deny to an individual eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan because of the individual's or enrollee's use or potential use of items or services that are covered in accordance with the requirements of this section;

''(2) provide monetary payments or rebates to a covered individual to encourage such individual to accept less than the minimum protections available under this section;

''(3) penalize or otherwise reduce or limit the reimbursement of a health care professional because such professional prescribed contraceptive drugs or

devices, or provided contraceptive services, described in subsection (a), in accordance with this section; or

''(4) provide incentives (monetary or otherwise) to a health care professional to induce such professional to withhold from a covered individual contraceptive drugs or devices, or contraceptive services, described in subsection (a).

''(c) RULES OF CONSTRUCTION.—

''(1) IN GENERAL.—Nothing in this section shall be construed—

''(A) as preventing a group health plan and a health insurance issuer providing health insurance coverage in connection with a group health plan from imposing deductibles, coinsurance, or other cost-sharing or limitations in relation to—

''(i) benefits for contraceptive drugs under the plan, except that such a deductible, coinsurance, or other cost-sharing or limitation for any such drug may not be greater than such a deductible, coinsurance, or cost-sharing or limitation for any outpatient prescription drug otherwise covered under the plan;

''(ii) benefits for contraceptive devices under the plan, except that such a deductible, coinsurance, or other cost-sharing or limitation for any such device may not be greater than such a deductible, coinsurance, or cost-sharing or limitation for any outpatient prescription device otherwise covered under the plan; and

''(iii) benefits for outpatient contraceptive services under the plan, except that such a deductible, coinsurance, or other cost-sharing or limitation for any such service may not be greater than such a deductible, coinsurance, or cost-sharing or limitation for any outpatient health care service otherwise covered under the plan; and

''(B) as requiring a group health plan and a health insurance issuer providing health insurance coverage in connection with a group health plan to cover experimental or investigational contraceptive drugs or devices, or experimental or investigational contraceptive services, described in subsection (a), except to the extent that the plan or issuer provides coverage for

other experimental or investigational outpatient prescription drugs or devices, or experimental or investigational outpatient health care services.

''(2) LIMITATIONS.—As used in paragraph (1), the term 'limitation' includes—

''(A) in the case of a contraceptive drug or device, restricting the type of health care professionals that may prescribe such drugs or devices, utilization review provisions, and limits on the volume of prescription drugs or devices that may be obtained on the basis of a single consultation with a professional; or

''(B) in the case of an outpatient contraceptive service, restricting the type of health care professionals that may provide such services, utilization review provisions, requirements relating to second opinions prior to the coverage of such services, and requirements relating to preauthorizations prior to the coverage of such services.

''(d) NOTICE UNDER GROUP HEALTH PLAN.—The imposition of the requirements of this section shall be treated as a material modification in the terms of the plan described in section 102(a)(1), for purposes of assuring

notice of such requirements under the plan, except that the summary description required to be provided under the last sentence of section 104(b)(1) with respect to such modification shall be provided by not later than 60 days after the first day of the first plan year in which such requirements apply.

''(e) PREEMPTION.—Nothing in this section shall be construed to preempt any provision of State law to the extent that such State law establishes, implements, or continues in effect any standard or requirement that provides protections for enrollees that are greater than the protections provided under this section.

''(f) DEFINITION.—In this section, the term 'outpatient contraceptive services' means consultations, examinations, procedures, and medical services, provided on an outpatient basis and related to the use of contraceptive methods (including natural family planning) to prevent an unintended pregnancy.''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act, as amended by section 603 of the Newborns' and Mothers' Health Protection Act of 1996 and section 702 of the Mental Health Parity Act of 1996, is amended by inserting after the item relating to section 712 the following new item:

''Sec. 713. Standards relating to benefits for contraceptives.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning on or after January 1, 1998.

SEC. 113. AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT RELATING TO THE GROUP MARKET.

(a) IN GENERAL.—Subpart 2 of part A of title XXVII of the Public Health Service Act (as added by section 604(a) of the Newborns' and Mothers' Health Protection Act of 1996 and amended by section 703(a) of the Mental Health Parity Act of 1996) is further amended by adding at the end the following new section:

"SEC. 2706. STANDARDS RELATING TO BENEFITS FOR CONTRACEPTIVES.

''(a) REQUIREMENTS FOR COVERAGE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, may not—

''(1) exclude or restrict benefits for prescription contraceptive drugs or devices approved by the Food and Drug Administration, or generic equivalents approved as substitutable by the Food and Drug Administration, if such plan provides benefits for other outpatient prescription drugs or devices; or

''(2) exclude or restrict benefits for outpatient contraceptive services if such plan provides benefits

for other outpatient services provided by a health care professional (referred to in this section as 'outpatient health care services').

''(b) PROHIBITIONS.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, may not—

''(1) deny to an individual eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan because of the individual's or enrollee's use or potential use of items or services that are covered in accordance with the requirements of this section;

''(2) provide monetary payments or rebates to a covered individual to encourage such individual to accept less than the minimum protections available under this section;

''(3) penalize or otherwise reduce or limit the reimbursement of a health care professional because such professional prescribed contraceptive drugs or devices, or provided contraceptive services, described in subsection (a), in accordance with this section; or

''(4) provide incentives (monetary or otherwise) to a health care professional to induce such professional to withhold from a covered individual contra-

ceptive drugs or devices, or contraceptive services, described in subsection (a).

''(c) RULES OF CONSTRUCTION.—

''(1) IN GENERAL.—Nothing in this section shall be construed—

''(A) as preventing a group health plan and a health insurance issuer providing health insurance coverage in connection with a group health plan from imposing deductibles, coinsurance, or other cost-sharing or limitations in relation to—

''(i) benefits for contraceptive drugs under the plan, except that such a deductible, coinsurance, or other cost-sharing or limitation for any such drug may not be greater than such a deductible, coinsurance, or cost-sharing or limitation for any outpatient prescription drug otherwise covered under the plan;

''(ii) benefits for contraceptive devices under the plan, except that such a deductible, coinsurance, or other cost-sharing or limitation for any such device may not be greater than such a deductible, coinsurance, or cost-sharing or limitation for any

outpatient prescription device otherwise covered under the plan; and

''(iii) benefits for outpatient contraceptive services under the plan, except that such a deductible, coinsurance, or other cost-sharing or limitation for any such service may not be greater than such a deductible, coinsurance, or cost-sharing or limitation for any outpatient health care service otherwise covered under the plan; and

''(B) as requiring a group health plan and a health insurance issuer providing health insurance coverage in connection with a group health plan to cover experimental or investigational contraceptive drugs or devices, or experimental or investigational contraceptive services, described in subsection (a), except to the extent that the plan or issuer provides coverage for other experimental or investigational outpatient prescription drugs or devices, or experimental or investigational outpatient health care services.

''(2) LIMITATIONS.—As used in paragraph (1), the term 'limitation' includes—

"(A) in the case of a contraceptive drug or device, restricting the type of health care professionals that may prescribe such drugs or devices, utilization review provisions, and limits on the volume of prescription drugs or devices that may be obtained on the basis of a single consultation with a professional; or

"(B) in the case of an outpatient contraceptive service, restricting the type of health care professionals that may provide such services, utilization review provisions, requirements relating to second opinions prior to the coverage of such services, and requirements relating to preauthorizations prior to the coverage of such services.

"(d) NOTICE.—A group health plan under this part shall comply with the notice requirement under section 713(d) of the Employee Retirement Income Security Act of 1974 with respect to the requirements of this section as if such section applied to such plan.

"(e) PREEMPTION.—Nothing in this section shall be construed to preempt any provision of State law to the extent that such State law establishes, implements, or continues in effect any standard or requirement that provides

protections for enrollees that are greater than the protections provided under this section.

''(f) DEFINITION.—In this section, the term 'outpatient contraceptive services' means consultations, examinations, procedures, and medical services, provided on an outpatient basis and related to the use of contraceptive methods (including natural family planning) to prevent an unintended pregnancy.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to group health plans for plan years beginning on or after January 1, 1998.

SEC. 114. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT RELATING TO THE INDIVIDUAL MARKET.

(a) IN GENERAL.—Subpart 3 of part B of title XXVII of the Public Health Service Act (as added by section 605(a) of the Newborn's and Mother's Health Protection Act of 1996) is amended by adding at the end the following new section:

''SEC. 2752. STANDARDS RELATING TO BENEFITS FOR CONTRACEPTIVES.

''The provisions of section 2706 shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as they apply to health insurance coverage offered by a health insurance

issuer in connection with a group health plan in the small or large group market.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after January 1, 1998.

Subtitle C—Emergency Contraceptives

SEC. 121. EMERGENCY CONTRACEPTIVE EDUCATION.

(a) DEFINITION.—In this section:

(1) EMERGENCY CONTRACEPTIVE.—The term ''emergency contraceptive'' means a drug or device (as the terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)) that is designed—

(A) to be used after sexual relations; and

(B) to prevent pregnancy, by preventing ovulation, fertilization of an egg, or implantation of an egg in a uterus.

(2) HEALTH CARE PROVIDER.—The term ''health care provider'' means anyone licensed or certified under State law to provide health care services who is operating within the scope of such license.

(3) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the

meaning given the term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

(b) EMERGENCY CONTRACEPTIVE PUBLIC EDUCATION PROGRAM.—

(1) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, shall develop and disseminate to the public information on emergency contraceptives.

(2) DEVELOPMENT AND DISSEMINATION.—The Secretary may develop and disseminate the information directly or through arrangements with nonprofit organizations, consumer groups, institutions of higher education, Federal, State, or local agencies, and clinics.

(3) INFORMATION.—The information shall include, at a minimum, information describing emergency contraceptives, and explaining the use, effects, efficacy, and availability of the contraceptives.

(c) EMERGENCY CONTRACEPTIVE INFORMATION PROGRAM FOR HEALTH CARE PROVIDERS.—

(1) IN GENERAL.—The Secretary of Health and Human Services, acting through the Administrator of the Health Resources and Services Administra-

tion, shall develop and disseminate to health care providers information on emergency contraceptives.

(2) INFORMATION.—The information shall include, at a minimum—

(A) information describing the use, effects, and efficacy and availability of the contraceptives;

(B) a recommendation from the Secretary regarding the use of the contraceptives in appropriate cases; and

(C) information explaining how to obtain copies of the information developed under subsection (b), for distribution to the patients of the providers.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $5,000,000 for the period consisting of fiscal years 1999 through 2001.

TITLE II—RESEARCH

SEC. 201. PREVENTIVE HEALTH MEASURES REGARDING BREAST AND CERVICAL CANCER AND CHLAMYDIA.

It is the sense of Congress that the programs of grants under section 318 and title XV of the Public Health Service Act (42 U.S.C. 247c and 300k et seq.)

should receive a level of funding that is adequate for all States, or entities in all States, as appropriate, to receive grants under such section and title.

SEC. 202. PROGRAMS REGARDING CONTRACEPTION AND INFERTILITY.

(a) RESEARCH CENTERS.—It is the sense of Congress that the program assisting research centers under section 452A of the Public Health Service Act (42 U.S.C. 285g–5) should receive a level of funding that is adequate for a reasonable number of research centers to be operated under the program.

(b) LOAN REPAYMENT PROGRAM REGARDING CONDUCT OF RESEARCH.—It is the sense of Congress that the program of loan-repayment contracts under section 487B of the Public Health Service Act (42 U.S.C 288–2) should receive a level of funding that is adequate for a reasonable number of individuals to conduct research under the program.

TITLE III—CHOICE PROTECTION

SEC. 301. FUNDING FOR ABORTION SERVICES.

It is the sense of Congress that Federal and State governments should provide funding for abortion services to women eligible for assistance through the medicaid program carried out under title XIX of the Social Security

Act (42 U.S.C. 1396 et seq.), as such services are essential to the health and well-being of women.

SEC. 302. CLINIC VIOLENCE.

It is the sense of Congress that—

(1) Federal resources are necessary to ensure that women have safe access to reproductive health facilities and that health professionals can deliver services in a secure environment free from violence and threats of force; and

(2) it is necessary and appropriate to use Federal resources to combat the nationwide campaign of violence and harassment against reproductive health centers.

SEC. 303. APPROVAL OF RU–486.

The Secretary of Health and Human Services shall—

(1) ensure that a decision by the Food and Drug Administration to approve the drug called Mifepristone or RU–486 shall be made only on the basis provided in law; and

(2) assess initiatives by which the Department of Health and Human Services can promote the testing, licensing, and manufacturing in the United States of the drug or other antiprogestins.

SEC. 304. FREEDOM OF CHOICE.

(a) FINDINGS.—Congress finds the following:

(1) The 1973 Supreme Court decision in Roe v. Wade, 410 U.S. 113 (1973) established constitutionally based limits on the power of States to restrict the right of a woman to choose to terminate a pregnancy. Under the strict scrutiny standard enunciated in the Roe v. Wade decision, States were required to demonstrate that laws restricting the right of a woman to choose to terminate a pregnancy were the least restrictive means available to achieve a compelling State interest. Since 1989, the Supreme Court has no longer applied the strict scrutiny standard in reviewing challenges to the constitutionality of State laws restricting such rights.

(2) As a result of the recent modification by the Supreme Court of the strict scrutiny standard enunciated in the Roe v. Wade decision, certain States have restricted the right of women to choose to terminate a pregnancy or to utilize some forms of contraception, and the restrictions operate cumulatively to—

(A)(i) increase the number of illegal or medically less safe abortions, often resulting in physical impairment, loss of reproductive capacity, or death to the women involved;

(ii) burden interstate and international commerce by forcing women to travel from States in which legal barriers render contraception or abortion unavailable or unsafe to other States or foreign nations;

(iii) interfere with freedom of travel between and among the various States;

(iv) burden the medical and economic resources of States that continue to provide women with access to safe and legal abortion; and

(v) interfere with the ability of medical professionals to provide health services;

(B) obstruct access to and use of contraceptive and other medical techniques that are part of interstate and international commerce;

(C) discriminate between women who are able to afford interstate and international travel and women who are not, a disproportionate number of whom belong to racial or ethnic minorities; and

(D) infringe on the ability of women to exercise full enjoyment of rights secured to the women by Federal and State law, both statutory and constitutional.

(3) Although Congress may not by legislation create constitutional rights, Congress may, where authorized by a constitutional provision enumerating the powers of Congress and not prohibited by a constitutional provision, enact legislation to create and secure statutory rights in areas of legitimate national concern.

(4) Congress has the affirmative power under section 8 of article I of the Constitution and under section 5 of the 14th amendment to the Constitution to enact legislation to prohibit State interference with interstate commerce, liberty, or equal protection of the laws.

(b) PURPOSE.—The purpose of this section is to establish, as a statutory matter, limitations on the power of a State to restrict the freedom of a woman to terminate a pregnancy in order to achieve the same limitations as were provided, as a constitutional matter, under the strict scrutiny standard of review enunciated in the Roe v. Wade decision and applied in subsequent cases from 1973 through 1988.

(c) DEFINITION.—As used in this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and each other territory or possession of the United States.

(d) GENERAL AUTHORITY.—A State—

(1) may not restrict the freedom of a woman to choose whether or not to terminate a pregnancy before fetal viability;

(2) may restrict the freedom of a woman to choose whether or not to terminate a pregnancy after fetal viability unless such a termination is necessary to preserve the life or health of the woman; and

(3) may impose requirements on the performance of abortion procedures if such requirements are medically necessary to protect the health of women undergoing such procedures.

(e) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to—

(1) prevent a State from protecting unwilling individuals or private health care institutions from being required to participate in the performance of abortions to which the individuals or institutions are conscientiously opposed;

(2) prevent a State from declining to pay for the performance of abortions; or

(3) prevent a State from requiring a minor to involve a parent, guardian, or other responsible adult before terminating a pregnancy.

SEC. 305. FAIRNESS IN INSURANCE.

Notwithstanding any other provision of law, no Federal law shall be construed to prohibit a health plan from offering coverage for the full range of reproductive health care services, including abortion services.

SEC. 306. REPRODUCTIVE RIGHTS OF WOMEN IN THE MILITARY.

Section 1093 of title 10, United States Code, is amended—

(1) in subsection (a), by inserting before the period the following: ''or in a case in which the pregnancy involved is the result of an act of rape or incest or the abortion involved is medically necessary or appropriate'';

(2) by striking subsection (b) (as added by section 738 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 383)); and

(3) by adding at the end the following:

''(b) ABORTIONS IN FACILITIES OVERSEAS.—Subsection (a) does not limit the performing of an abortion in a facility of the uniformed services located outside the 48 contiguous States of the United States if—

''(1) the cost of performing the abortion is fully paid from a source or sources other than funds available to the Department of Defense;

''(2) abortions are not prohibited by the laws of the jurisdiction where the facility is located; and

''(3) the abortion would otherwise be permitted under the laws applicable to the provision of health care to members and former members of the uniformed services and their dependents in such facility.''.

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